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MERIT SYSTEMS PROTECTION BOARD

Case Processing Timeliness and Participants' Views on Board Activities



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The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

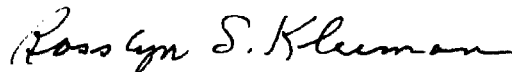
The Honorable John C. Stennis
Chairman, Committee on
Appropriations
United States Senate

The Honorable William D. Ford
Chairman, Committee on Post
Office and Civil Service
House of Representatives

The Honorable Jamie L. Whitten
Chairman, Committee on
Appropriations
House of Representatives

This report discusses efforts by the U.S. Merit Systems Protection Board to adjudicate federal employee appeals of agency personnel actions, such as demotions and removals, in an expeditious manner. The report is one of a series issued during the past year in meeting our Public Law 94-454 requirement to report on the activities of the U.S. Merit Systems Protection Board and Office of Personnel Management.

We are sending copies of this report to the Chairman, U.S. Merit Systems Protection Board; Director, Office of Personnel Management; Director, Office of Management and Budget; and chairpersons of interested congressional subcommittees.


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Senior Associate Director

Executive Summary

Purpose

Reorganization Plan No. 2 and the Civil Service Reform Act of 1978 established the U.S. Merit Systems Protection Board to hear federal employee appeals of agency actions, such as employee removal, reduction-in-grade, suspension, and retirement decisions for consistency with merit system principles and laws. To aid congressional oversight of the federal merit system, GAO assessed the Board's progress in adjudicating employee appeals of agency actions using the Board's standards for timeliness and participants' views of the appeals process.

Background

Before the Reform Act, employee appeals were handled by the Civil Service Commission. At that time, executive and legislative branch members questioned whether the Commission could act as the personnel office of the executive branch while at the same time impartially administer an employee appeals system. There was also concern that the Commission took too long to adjudicate employee appeals.

To improve timeliness, the Reform Act required the Board to establish and publicly announce its schedule for issuing decisions. Accordingly, the Board established a 120-day standard for processing appeals in its regional offices and a 110-day standard for reviewing regional office decisions appealed to the Board's headquarters.

Results in Brief

Timeliness of case disposition has improved. The proportion of cases decided within the regional office and headquarters standards has increased significantly in recent years.

GAO's survey of representatives of six groups having experience with the case processing system indicated general satisfaction with the timeliness standards adopted by the Board for adjudicating cases. The six groups were agency general counsels, agency attorneys, agency employee and labor relations representatives, private attorneys, union presidents, and professional association representatives. While all groups were generally satisfied with the actual time it took the regional offices to process appeals, not all groups were satisfied with the time it took the Board's headquarters to process petitions for review of regional office appeals decisions.

GAO also analyzed the views of representatives of the six groups of appeals process participants on the objectivity, independence, and fairness of the appeals process and the consistency of decisions. In general, the groups representing agencies' interests viewed the performance of

the Board's regional offices and headquarters more favorably than did the groups representing employee interests.

GAO's Analysis

Timeliness in Processing Appeals Has Improved

For appeals decided during fiscal year 1982, the Board's regional offices reported processing 82 percent of employee appeals within the 120-day standard. However, in fiscal year 1983, only 17 percent of the cases decided were processed within the standard. The Board attributed this decline to budget cuts and the extraordinary increase in workload that resulted from former air traffic controllers' appeals of their removal from the federal service. In fiscal year 1984, the regional offices began to recover and 77 percent of appeals decisions were processed within 120 days. During fiscal years 1985 and 1986, they decided 95 and 99 percent, respectively, within the standard. (See p. 20.)

The Board's headquarters issued 3.6 percent of petitions for review within its 110-day standard in fiscal year 1982, 16 percent in 1983, 12.9 percent in 1984, 51.7 percent in 1985, and 53 percent in 1986. (See p. 23.)

The Board attributed processing delays at headquarters to (1) the lingering effects of a backlog in cases inherited from the Civil Service Commission, (2) Board policy to hold certain petitions pending a review of major issues that could establish precedents for other similar cases, (3) fiscal year 1982 budget cuts, (4) air traffic controller appeals, and (5) circumstances beyond its control, such as when processing was stopped pending court decisions in class action cases. (See p. 24.)

About half or more of the participants in each group GAO surveyed indicated they were satisfied or very satisfied with the standard case processing time frames and with the actual time it took regional offices to process cases. However, fewer than half of the participants in the agency attorney, agency employee and labor relations representative, private attorney, and union president groups indicated they were satisfied or very satisfied with the headquarters processing times. (See pp. 22 and 25.)

Participants' Views on the Appeals Process

The majority of agency general counsels, agency attorneys, professional association representatives, and agency employee and labor relations representatives responding to GAO's questionnaire rated the appeals process as objective, independent, and fair to a great or very great extent at both the regional office and headquarters levels. However, most private attorneys and labor union presidents responding viewed the process as objective, independent, and fair from a small to a moderate extent. Over half of the participants in the agency general counsel, agency attorney, agency employee and labor relations representative, and professional association groups perceived regional office and headquarters decisions as consistent or very consistent with their supporting rationales. Less than half of the participants in the private attorney and labor union president groups perceived regional office and headquarters decisions as consistent or very consistent with their supporting rationales. (See p. 38.)

Recommendations

This report provides an assessment of the progress made by the Board in hearing and adjudicating employee appeals; it contains no recommendations.

Agency Comments

The Board's Chairman agreed with GAO's analysis of case processing timeliness and said it would be useful in the Board's continuing evaluation of case processing. He also noted that the questionnaire respondents were individuals affected by Board decisions and that respondents who had prevailed before the Board might tend to view the objectivity, independence, and fairness of the process more favorably than those who had not prevailed. While GAO has no evidence of response bias of this nature, the reader should be aware of the possibility that it could have affected the respondents' views. (See app. II.)

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Abbreviations

EEOC	Equal Employment Opportunity Commission
GAO	General Accounting Office
OPM	Office of Personnel Management
VEAP	Voluntary Expedited Appeals Procedure
PFR	Petition for Review

Introduction

The U.S. Merit Systems Protection Board was established on January 1, 1979, by Reorganization Plan No. 2 of 1978. The plan abolished the Civil Service Commission and separated its personnel management functions from its adjudicatory, appellate, and merit system enforcement responsibilities, placing them in two new agencies—the Office of Personnel Management (OPM) and the Merit Systems Protection Board (Board), respectively. A major reason for the reorganization was to eliminate the conflicting roles of the Civil Service Commission as both rule maker and adjudicator. The Commission functioned as the government's chief personnel office and management agent and also as the final administrative review authority in employee appeals. Because of this duality, the appeals program was often criticized as lacking independence and objectivity. Executive and legislative branch members questioned whether the Civil Service Commission or any one agency could act as personnel office and simultaneously administer an employee appeals system in an impartial manner. In addition, there was concern that the Commission took too long to adjudicate appeals.

The functions and responsibilities transferred to the Board under the reorganization plan were expanded under the Civil Service Reform Act of 1978, which took effect on January 11, 1979. The reform act said that

“Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees.”

The Reform Act included many provisions to strengthen oversight of the federal merit system. Some of these were:

- Merit systems principles and prohibited personnel practices were specifically spelled out.
- The Board was given authority to review and invalidate OPM rules and regulations if the Board decided they required any employee to commit a prohibited personnel practice.
- The Board can order corrective action by agencies, direct that pay be withheld from employees who willfully fail or refuse to carry out orders of the Board, and impose disciplinary action on agency officials who commit prohibited personnel practices.
- Decisions and orders of the Board were subject to judicial review.
- The Board was required to establish and publish time standards for deciding appeals.

The Board and Its Responsibilities

The Board is a three-member bipartisan agency. The President, with the advice and consent of the Senate, appoints each member to a single 7-year term. Members can be removed only for inefficiency, neglect of duty, or malfeasance in office. The Board is headquartered in Washington, D.C. and has 11 regional offices. For fiscal year 1987, the Board's appropriation was about \$19.1 million.

Major Responsibilities

The Board has statutory authority to examine witnesses, take depositions, administer oaths, and issue subpoenas. Perhaps the most notable difference between the Board and the former appeals system is the enforcement authority vested in the Board. If agency officials, with the exception of Presidential appointees confirmed by the Senate, do not comply with a Board order, they can be barred from receiving payment for services during any period of noncompliance.

Various laws, rules, and regulations give employees the right to appeal agency actions to the Board. Appealable actions include employee removal, reduction-in-grade, suspensions, termination of probationers, reduction-in-force decisions, and OPM determinations on disability and other retirement claims.

In appeals before the Board, appellants are entitled to (1) a hearing for which a transcript must be kept, (2) having a representative present, and (3) a written decision on the appeal. The burden of proof is on the agency which took the appealed action. Agencies must show that their actions were supported by "a preponderance of evidence," except for actions based on unacceptable employee job performance where the burden is the lesser standard of "substantial evidence." The Board will not reverse agency actions which meet the appropriate standard of evidence unless appellants can show harmful procedural error or that the actions were based on a prohibited personnel practice or were otherwise not in accordance with law. The Board also has authority to award reasonable attorney fees to employees who win their appeals when it determines that payment is warranted in the interests of justice.

Except for appeals which include allegations of discrimination, decisions of the Board or its administrative judges are final administrative determinations. Decisions are subject to judicial review.

The Reform Act established separate procedures for actions appealable to the Board which the appellants allege were based, at least in part, on prohibited discrimination. Under these procedures, the Board issues a

decision on the discrimination charge and the action under appeal. If the decision on the discrimination charge is adverse, the employee may appeal to the Equal Employment Opportunity Commission (EEOC). If the Board and EEOC differ on the issue, the matter is then referred for final administrative disposition to a special panel composed of one member of the Board, one member of EEOC, and a Chairman appointed by the President with the advice and consent of the Senate.

The Board also has the authority and responsibility under the Reform Act to conduct studies and report to the President and Congress on whether the merit system is free from prohibited personnel practices. The Reform Act also requires the Board to report annually on the significant actions of OPM.

Board Output, Case Outcomes, and Staffing Levels

The Board has two levels of appeal of agency personnel actions. The first review is performed at the regional office level by an administrative judge. If either party to the appeal requests a review of the regional office decision, a second review is conducted by the Board itself. Board review of a regional office decision may also be requested by OPM, the Office of Special Counsel, the Board's own motion, or, in certain circumstances, other intervenors.

Table 1.1 shows the number of decisions issued by the Board's regional and headquarters offices for fiscal years 1982 through 1986.

Table 1.1: Decisions by the Board's Regional Offices and Headquarters—Fiscal Years 1982-1986

Fiscal year	Number issued	
	Regional offices	Headquarters
1982	7,124	1,389
1983	18,820	4,169
1984	7,032	6,597
1985	6,523	2,691
1986	6,850	1,630
Total	46,349^a	16,476^b

^aIncludes 11,314 Air Traffic Controller decisions.

^bIncludes 5,967 Air Traffic Controller decisions.

For all non-Air Traffic Controller decisions issued by the regional offices during fiscal years 1982 through 1985, agencies' actions were upheld in about 88 percent of the decisions. The others were modified—either reversed or the severity of the penalty imposed by the agency reduced.

When only those non-Air Traffic Controller appeals decided by the regional offices on the merits¹ during fiscal years 1982 through 1985 are considered, about 75 percent of the agencies' actions were upheld and about 25 percent were modified.

In August 1981, a large number of the Nation's air traffic controllers were removed by the Federal Aviation Administration because of their alleged participation in a strike. This event had a profound impact on the Board's workload as the Board became the focus of the fired air traffic controllers' efforts to regain their jobs. For all Air Traffic Controller decisions issued by the regional offices during fiscal years 1982 and 1983, the agency's actions were upheld in about 97 percent and modified in about 3 percent of the decisions. For those Air Traffic Controller cases decided by the regional offices on the merits during fiscal years 1982 and 1983, the agency's actions were also upheld in about 97 percent of the decisions.

For all non-Air Traffic Controller decisions issued by headquarters during fiscal years 1982 through 1985, regional office decisions were upheld in about 82 percent of the cases and modified in 18 percent. Of those petitions for review decided on the merits,² about 38 percent of regional office decisions were upheld and about 62 percent modified. For all Air Traffic Controller decisions issued by headquarters during fiscal years 1983 and 1984, regional office decisions were upheld in about 95 percent and modified in about 5 percent of cases. For those Air Traffic Controller cases decided by headquarters on the merits, regional office decisions were upheld in about 87 percent and modified in about 13 percent of the cases.

Table 1.2 provides information on staffing levels for the Board's regional offices and headquarters during fiscal years 1981 through 1986.

¹Cases "decided on the merits" by regional offices are those which were determined by the regional offices to have met the Board's timeliness requirements, are appealable to the Board, and were upheld, mitigated, remanded, or reversed. For example, an employee appeal of an agency action which removed the employee from the federal service for misconduct would be decided on the merits if the appeal was filed with a regional office within 20 days of the date the agency took the action. Employee appeals are not decided on the merits if they are not timely filed or the agency action is not appealable to the Board under any law, rule, or regulation.

²Cases "decided on the merits" by headquarters are those which the Board determines meet its standards of review. The Board may grant a petition to review a regional office decision when it establishes that (1) new and material evidence is available, that despite due diligence, was not available when the record was closed; or (2) the regional office decision is based on an erroneous interpretation of statute or regulation. Petitions for review are not decided on merits if they do not meet these standards or were not filed within 35 days of the regional office decision.

Table 1.2: Staffing Level—Regional Offices and Headquarters

Fiscal year	Staff years used		Total
	Regional offices	Head-quarters	
1981	144	203	347
1982	190	198	388
1983	182	227	409
1984	166	211	377
1985	148	189	337
1986	136	170	306

Objective, Scope, and Methodology

The objective of our review was to aid congressional oversight of the federal merit system by providing an assessment of the Board's progress in hearing and adjudicating employee appeals of agency actions. This report is part of our effort to meet the Title I, Section 101(a), Reform Act requirement to report on the significant activities of OPM and the Board. Our review was conducted at the Board's headquarters in Washington, D.C., and at 3 of the Board's 11 regional offices—Boston, San Francisco, and Washington, D.C. The regional locations were selected based on their size using the number of assigned administrative judges as the selection criterion. San Francisco was selected because, with 14 administrative judges, it was considered a large office; Washington, D.C., a medium office with 8 administrative judges; and Boston, a small office with 3 administrative judges.

Our audit work, conducted between January and October 1986, was performed in accordance with generally accepted government audit standards and involved

- reviewing the Reform Act's legislative history and Board regulations on processing appeals of agency actions;
- obtaining views on Board case processing practices from officials of OPM's Appellate Policies Division and Federal Employee Coordinating Committee;
- reviewing Board case processing performance reports, which we did not verify to source documents, to assess the timeliness of case processing by the Board;
- interviewing administrative judges and chief administrative judges in the three regional offices to obtain their views on case processing procedures and practices;
- interviewing officials at Board headquarters in the Office of the Clerk of the Board, Office of Appeals Counsel, Office of Managing Director, and

Office of the General Counsel to obtain their views on case processing procedures and practices; and

- obtaining appeals process participants' views of the perceived consistency of decisions, objectivity of the appeals process, changes that may be warranted, and other related aspects of the appeals process.

We sent questionnaires to six groups of individuals involved in the appeals process. These included employee and labor-management relations representatives in federal agencies, general counsels of federal agencies, federal agency attorneys, presidents of federal employee unions, private attorneys representing appellants, and representatives of federal employee professional associations. The employee and labor-management relations representatives were members of OPM's Inter-agency Advisory Group Committee on Employee and Labor-Management Relations. Professional association representatives were from organizations belonging to the Public Employees Roundtable. Union presidents were with unions listed in Union Recognition in the Federal Government (Office of Personnel Management, January 1985). Agency general counsels were members of the General Counsels Committee. We selected private attorneys and agency attorneys from Board prepared listings of attorneys who had appeared before administrative judges in the Board's regional offices.

We sent questionnaires to all individuals in each group, except the private and federal attorneys. Because of the large number of people in these two groups, we sent questionnaires to random samples and projected their responses to the groups. We mailed 804 questionnaires and received 600 usable questionnaires for an overall response rate of 75 percent. Questionnaire recipients who reported having had no actual case experience with the Board since 1979 were requested to return the questionnaire without completing it. Of the 600 questionnaires received, 422 were from recipients who indicated they had had case experience with the Board since 1979. Projecting rates of usable responses, we estimate that, had we sent a questionnaire to all 1,667 persons in the survey universe, we would have received responses from 1,169 persons, of whom 815 would have had experience with the Board.

In each table which summarizes the groups' responses to our questionnaire, the numbers of agency attorney and private attorney respondents are projections based on a random sample. For each of the other four groups, the number of respondents is the actual number of responses analyzed.

Questionnaire respondents were persons affected by the outcome of Board decisions and the nature of the decision might have influenced their opinions of the objectivity, independence, and fairness of the process. For example, a prevailing party, as a matter of human nature, might tend to view the process more favorably than a losing party. While we have no evidence of response bias of this nature, the reader should be aware of the possibility that it might have affected the respondents' views. (See appendix I for details on our survey methodology, sampling procedures, and questionnaire development.)

This report includes a summary analysis of the questionnaire respondents' views on selected aspects of the appeals process. A tabulation of the respondents' answers to each question is available on request.

To assess the amount of experience upon which questionnaire respondents based their opinions, we asked them to identify the number of cases, if any, they had been involved in since 1979. Most respondents in each category indicated they had participated in either 1 to 20 or no cases since January 1979. (See table 1.3.)

Table 1.3: Participants' Experience With the Board Since 1979

	Percentage of respondents						Total	Number of respondents
	No cases	1 to 20 cases	21 to 50 cases	51 to 100 cases	101 to 250 cases	Over 250 cases		
General counsels	16	54	10	6	7	7	100	70
Agency attorneys	23	40	18	11	2	6	100	218
Employee and labor relations representatives	27	47	13	4	3	6	100	90
Private attorneys	32	61	3	1	1	2	100	713
Union presidents	50	41	1	0	4	4	100	58
Professional association representatives	60	40	0	0	0	0	100	20
All groups	30	54	7	3	2	4	100	1,169

Timeliness of Processing Appeals of Personnel Actions Has Improved

One objective of the Civil Service Reform Act of 1978 was to assure that appeals of agency actions were processed in an expeditious manner. Accordingly, the Reform Act requires the Board to establish and publicly announce its schedule for completing action on appeals. To implement this requirement, the Board published notice in the Federal Register that all appeals will be decided by the Board's regional offices within 120 days of the filing of the appeal, and the Board headquarters will complete action on petitions for review of regional office decisions within 110 days of their receipt.

The number of appeals processed within the time limit at regional offices and the number of petitions for review processed within the time limit at the headquarters level have increased over the past several years. For example, the proportion of appeals decided within the regional office standard of 120 days increased from 17 percent in fiscal year 1983 to 99 percent in fiscal year 1986. The proportion of petitions for review decided within the Board's headquarters standard of 110 days increased from 3.6 percent in fiscal year 1982 to 53 percent during fiscal year 1986.

The Board attributed case processing delays during fiscal years 1982 through 1985 to (1) the lingering effects of a backlog of cases inherited from the Civil Service Commission; (2) Board policy to hold certain petitions until the major, precedent-setting issues they involved could be reviewed; (3) the effects of budget cuts in fiscal year 1982; and (4) the extraordinary increase in workload generated in the aftermath of the Air Traffic Controllers' strike of August 1981. In some cases, the Board attributed its lack of success in meeting the time standard at the headquarters level during fiscal year 1986 to circumstances beyond its control, such as when stays of action were ordered pending court decisions in class action cases.

The six groups of appeals process participants responding to our questionnaire generally believed the standard case processing time frames established for the regional office and headquarters levels were reasonable. They were also generally satisfied with the actual time it took regional offices to process appeals; however, they were not as satisfied with the time it took the Board to process petitions for review.

The Board has established a Voluntary Expedited Appeals Procedure (VEAP) as an alternative procedure to provide employees and agencies a simplified, faster process for adjudicating appeals. The VEAP was

designed to encourage informal resolution of appeals, including settlement by agreement between parties. Under the VEAP, standard time frames for regions and headquarters to issue decisions were set at one half those of the regular appeals process. The VEAP began as a pilot program in March 1983, but did not become fully operational in all regional offices until April 1985. Thus far, the VEAP has been used infrequently. During fiscal years 1983, 1984, and 1985, employee appellants requested to use the VEAP in 1,097 cases, but the agencies involved agreed to the procedure in only 259 of these cases. Only 9 percent of the projected 815 respondents to our questionnaire had used the VEAP. And, of those participants who had used the VEAP, 67 percent had experience with the VEAP in just one case.

The Board is currently reviewing the VEAP to determine whether it should be modified or discontinued. As of March 1987, the Board's assessment had not been completed.

Regional Office and Headquarters Case Processing Procedures

Over time, the Board has taken several initiatives to enhance expeditious processing of employee appeals. The Board implemented an automated case tracking system that allows it to better monitor case progress, identify problem areas, and shift resources to meet changing needs. The Board established a procedure to group cases geographically for hearings to reduce the travel time and cost of operating its regional offices. The Board also implemented a procedure to establish and publish a body of precedential case law that potential appellants and agencies may use as a guide to how the Board may decide similar issues in the future.

Under the Board's procedures, processing of an appeal begins when it is received at one of the Board's 11 regional offices. Board procedures require the regional director to assign the appeal to an administrative judge within 3 days after receipt of the appeal and issue an order acknowledging receipt of the appeal to the employee and directing the agency involved to file a response. The order also provides information about the Board's procedures.

Agency responses are required to be received within 25 days of the initial order. When a hearing is requested by the appellant, the administrative judge must, within 30-35 days of receipt of the appeal, schedule a hearing; notify the parties of the date, time, and location of the hearing; and advise the parties of actions needed to be completed before the hearing. Preliminary motions concerning discovery of evidence, venue,

and subpoena of witnesses are filed and ruled upon by the administrative judge between the date the appeal is filed and the hearing.

A telephone pre-hearing conference is to be scheduled approximately 10-20 days prior to the hearing. At that time, the administrative judge assists the parties in narrowing issues to those actually in dispute and identifying witnesses whose testimony will be heard and documents to be offered into evidence. The administrative judge explores the possibility of settlement of the appeal and, if requested by the parties, assists in arriving at a settlement agreement.

If a settlement agreement is not reached, the hearing is to take place within 60-75 days from the date the appeal is filed. In the majority of cases, the record closes with the conclusion of the hearing; however, in some cases the record remains open for additional evidence or post hearing briefs.

After the record is closed, the administrative judge reviews the evidence, researches the law, and drafts a decision on the appeal. The regional director reviews the draft decision to ensure that all issues are addressed, findings of fact are supported in the decision by reference to the evidence, and findings of law are supported by appropriate statutes, regulations, or precedential decisions. The administrative judge's decision is to be issued within 120 days from the date the appeal is received.

Within 35 days after an initial decision is issued at the regional office level, any party to the appeal; the Director of OPM; the Office of Special Counsel; or, in certain circumstances, other intervenors may petition the Board to review it. Board regulations provide that motions for extension of time to file a petition for review may be granted if the motion is supported by a showing of good cause.

Upon receipt of a petition for review, the Clerk of the Board requests the administrative record from the regional office issuing the initial decision. The other parties to the appeal are given 25 days from the service of the petition to file a response and/or a cross-petition for review.¹ If a cross-petition is filed, the initial parties are given 25 days from the date of the cross-petition to respond to the cross-petition. The case is then forwarded to the Board's Office of Appeals Counsel.

¹ A cross petition is a petition filed with the Board by the respondent party raising issues that were not raised in the petition for review.

When a case is received in the Office of Appeals Counsel, it is logged in, dated for forwarding to the Board 50 days later, and assigned to an attorney in one of four adjudication teams. The attorney reviews the record, performs the necessary research, and prepares a memorandum to the Board with a recommended disposition of the petition and a decision which puts the recommendation into effect. A supervisory attorney reviews the decision, and, depending on the nature of the decision, the Assistant to the Director or Associate Director and Director of the Office of Appeals Counsel may also review the decision. The case is then forwarded to the three Board members for review.

Board members review the cases individually, one after the other. Each case generally goes before each of the Board members within approximately a 3-week period. Each member's executive assistant also reviews the proposed decision and makes a recommendation to his/her member. When at least two of three Board members agree on a proposed decision, the case is sent to the Office of the Clerk for issuance. If the Board majority directs a revision of the proposed decision, the case is returned to the attorney in the Office of Appeals Counsel for rewriting. The case is then reviewed again within the Office of Appeals Counsel and returned to the Board members for final approval. The Clerk is to issue the decision within 24 hours of receipt of the final decision from the Board.

Timeliness of Appeals Processing by the Regional Offices Has Improved

Since 1982, the regional offices have improved their case processing times. Table 2.1 shows the number of appeals adjudicated by the regional offices within the 120-day processing standard during fiscal years 1982 through 1986.

Table 2.1: Appeals Decided by Regional Offices Within the 120-Day Standard^a

Fiscal year	Appeals Decided			
	Within standard		Total	
	Number	Percent	Number	Percent
1982	4,950	82	6,039 ^b	100
1983	3,264	17	18,812	100
1984	5,423	77	7,032	100
1985	6,164	95	6,523	100
1986	6,818	99	6,850	100

^aDecision date of the appeal was the criterion used to categorize performance data by fiscal year

^bProcessing data was available in automated data base for total shown in chart

Factors Contributing to Delays in Regional Office Case Processing

Two events were highlighted by the Board as contributing to its inability to always meet case processing goals at the regional level. These events were the budget cuts levied on the agency during fiscal year 1982 and the large influx of appeals by former Federal Aviation Administration air traffic controllers contesting their removals from federal service. As a consequence of budget reductions coupled with an increase in workload, fewer appeals were adjudicated within the 120-day regional office time frame in fiscal years 1983 and 1984.

Twice during fiscal year 1982 the Board's budget was cut— 4 percent in October 1981 and 12 percent in December 1981. These cuts reduced the Board's appropriation from \$15,037,000 to \$12,704,000. To cope with the reductions, the Board froze hiring, promotions, and overtime pay; furloughed (on a half-time basis) all Board employees for 2 weeks beginning in late June 1982; ceased all hearing activities for about 2 months; and prohibited travel by Board employees for 7 months, thus requiring appellants, agency personnel, and witnesses to travel to the Board's regional offices for hearings. Although the Board received a supplemental appropriation of \$4,006,000 in July 1982, allowing it to rescind the travel and hearing restrictions, a large backlog of cases had accumulated. The supplemental appropriation also permitted the Board to begin hiring additional administrative staff needed to handle the increased workload resulting from the influx of air traffic controller appeals. We discussed the effects of the budget cuts on the Board in a 1983 report.²

During fiscal year 1983, the regions completed processing all air traffic controller appeals; however, during this time a backlog of over 5,000 cases other than those involving air traffic controllers had accumulated. Two goals were established by the Board in early 1983 to reduce the backlog of cases not involving air traffic controllers: (1) reduce the backlog to 3,000 by September 30, 1983, and (2) decide all backlogged cases by February 1984. These goals were met by the regional offices, enabling them to resume a normal mode of operation in fiscal year 1985.

²Effects of Fiscal Year 1982 Budget Cuts on the Merit Systems Protection Board and Its Office of Special Counsel (GAO/FPCD-83-20, April 8, 1983)

Appeals Process Participants Were Satisfied With the Regional Office's Standard and Actual Appeals Processing Times

In our questionnaire, we asked appeals process participants to rate on a five-point scale ranging from "very dissatisfied" to "very satisfied" their degree of satisfaction with (1) the 120-day regional office standard time frame and (2) the actual time it took the regional offices to process cases. As shown in tables 2.2 and 2.3, in all groups surveyed, most respondents were satisfied or very satisfied with both the standard time frame and the actual time it took regional offices to process cases.

Table 2.2: Satisfaction With the 120-Day Regional Office Appeals Processing Standard

	Percentage of respondents					Total	Number of respondents
	Dissatisfied or very dissatisfied	Neither satisfied nor dissatisfied	Satisfied or very satisfied	No opinion	No answer		
General counsels	10	9	71	10	0	100	59
Agency attorneys	19	9	69	3	0	100	168
Employee and labor relations representatives	6	15	66	11	2	100	66
Private attorneys	13	12	61	11	3	100	486
Union presidents	14	3	66	17	0	100	29
Professional association representatives	0	0	100	0	0	100	8
All groups	13	11	65	9	2	100	815

Table 2.3: Satisfaction With Actual Appeals Processing Times at the Regional Office Level

	Percentage of respondents					Total	Number of respondents
	Dissatisfied or very dissatisfied	Neither satisfied nor dissatisfied	Satisfied or very satisfied	No opinion	No answer		
General counsels	8	6	76	10	0	100	59
Agency attorneys	12	15	70	3	0	100	168
Employee and labor relations representatives	11	13	63	11	2	100	66
Private attorneys	20	12	55	9	4	100	486
Union presidents	28	3	48	17	4	100	29
Professional association representatives	0	25	75	0	0	100	8
All groups	17	12	60	8	3	100	815

Participants' Views of Reasonable Regional Office Processing Time Frames

In our questionnaire, we asked appeals process participants which of seven time frames they thought was reasonable for processing appeals at the regional level. The greatest number of respondents in each group indicated that 91-120 days was a reasonable standard. (See table 2.4.)

Table 2.4: Participants' Opinions of Reasonable Time Frames for Appeals Processing at Regional Offices

	Percentage of respondents						Total	Number of respondents
	0-30 or 31-60 days	61-90 days	91-120 days	121-150 days	151-180 or 181 or more days	No answer		
General counsels	12	17	46	8	10	7	100	59
Agency attorneys	6	16	41	18	17	2	100	168
Employee and labor relations representatives	8	25	50	8	3	6	100	66
Private attorneys	11	19	39	15	8	8	100	486
Union presidents	24	17	45	10	0	4	100	29
Professional association representatives	0	0	100	0	0	0	100	8
All groups	10	19	42	14	9	6	100	815

Timeliness of Appeals Processing by the Board Has Improved

As table 2.5 shows, the Board's timeliness in issuing decisions on petitions for review has improved. The Board issued decisions on 53 percent of the petitions for review within its 110-day standard in fiscal year 1986, a significant improvement over previous years.

Table 2.5: Petitions Decided by the Board Within the 110-Day Standard^a

Fiscal year	Decisions issued			
	Within standard		Total	
	Number	Percent	Number	Percent
1982	50	3.6	1,389	100
1983	667	16.0	4,169	100
1984	851	12.9	6,597	100
1985	1,391	51.7	2,691	100
1986	864	53.0	1,630	100

^aDecision date of the appeal was the criterion used to categorize performance data by fiscal year.

**Factors Contributing to
Delays in Processing
Petitions for Review by
the Board**

The Board attributed delays in processing petitions for review to fiscal year 1982 budget cuts and the influx of air traffic controller appeals. The fiscal year 1982 budget cuts precluded the Board from increasing headquarters staff, which it felt was necessary to handle the increase in caseload as a result of the air traffic controller strike. Board officials told us that headquarters staff members had to concentrate on reviewing air traffic controller cases to identify and decide lead cases which could then serve as precedent decisions to guide adjudication of cases with similar issues. Board officials also told us that, in 1982, headquarters was still feeling the effects of a backlog of appeals inherited from the Civil Service Commission.

Although the Board was able to increase headquarters staffing in fiscal year 1983, Board officials said resources for processing petitions for review continued to be inadequate to cope with the demand associated with the air traffic controllers' petitions. The Board returned to normal operations in March 1985, but it did not start fiscal year 1985 in that posture. As a result of the Board's work on air traffic controller cases, a backlog of non-air traffic controllers cases built up. This backlog was not eliminated until March 1985.

The Board also attributed case processing delays to the Board's policy of deferring decisions on certain petitions for review pending a review of major issues which may establish precedents for other similar cases. Types of cases placed on the "major issues calendar" include the following:

- cases with issues also being considered in pending cases before one or more federal courts,
- cases involving new or novel issues not previously addressed by the Board, and
- cases where court and other adjudicative bodies' decisions on similar issues require extensive research.

The Board attributed its inability to process more petitions for review within the 110-day standard during fiscal year 1986 in some cases to circumstances beyond its control, such as when stays of action were ordered pending court decisions in class action cases

Appeals Process Participants Were More Satisfied With the Headquarters' Standard Than With the Actual Petition for Review Processing Times

We asked appeals process participants how satisfied they were with (1) the standard 110-day time frame for processing petitions for review at headquarters and (2) the actual time it took headquarters to process cases. We found that, in all groups surveyed, most participants were satisfied or very satisfied with the 110-day standard. However, the groups were less satisfied with the actual time it took to issue decisions on cases. Less than half of the participants in the agency attorney, agency employee and labor relations, private attorney, and union president groups indicated they were satisfied or very satisfied with the headquarters processing times.

Information on how satisfied appeals process participants were with the standard time frame and the actual case processing time for headquarters decisions is summarized in tables 2.6 and 2.7, respectively.

Table 2.6: Satisfaction With the 110-Day Headquarters Standard for Issuance of Decisions on Petitions for Review

	Percentage of respondents					Total	Number of respondents
	Dissatisfied or very dissatisfied	Neither satisfied nor dissatisfied	Satisfied or very satisfied	No opinion	No answer		
General counsels	7	5	76	12	0	100	59
Agency attorneys	10	14	62	11	3	100	168
Employee and labor relations representatives	8	18	59	15	0	100	66
Private attorneys	14	11	48	23	4	100	486
Union presidents	17	21	48	14	0	100	29
Professional association representatives	13	0	87	0	0	100	8
All groups	12	12	54	19	3	100	815

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Table 2.7: Satisfaction With Actual Times to Issue Decisions on Petitions for Review

	Percentage of respondents					Total	Number of respondents
	Dissatisfied or very dissatisfied	Neither satisfied nor dissatisfied	Satisfied or very satisfied	No opinion	No answer		
General counsels	27	7	53	13	0	100	59
Agency attorneys	34	13	40	11	2	100	168
Employee and labor relations representatives	26	17	44	13	0	100	66
Private attorneys	23	16	34	22	5	100	486
Union presidents	41	14	31	14	0	100	29
Professional association representatives	13	12	75	0	0	100	8
All groups	26	14	38	18	4	100	815

Participants' Views of Reasonable Headquarters Case Processing Time Frames

In our questionnaire, we asked appeals process participants which of seven time frames they thought was reasonable for headquarters processing of petitions for review. For each group, most participants indicated that 91-120 days was a reasonable standard. (See table 2.8.)

Table 2.8: Participants' Opinions of Reasonable Time Frames for Appeals Processing at Headquarters

	Percentage of respondents						Total	Number of respondents
	0-30 or 31-60 days	61-90 days	91-120 days	121-150 days	151-180 or 181 or more days	No answer		
General counsels	12	30	41	9	3	5	100	59
Agency attorneys	7	25	49	9	6	4	100	168
Employee and labor relations representatives	15	35	38	6	2	4	100	66
Private attorneys	12	18	43	9	9	9	100	486
Union presidents	17	24	41	4	10	4	100	29
Professional association representatives	12	25	50	0	13	0	100	8
All Groups	12	22	43	8	8	7	100	815

The Voluntary Expedited Appeals Procedure Is Used Infrequently

The Reform Act authorized the Board to

“by regulation, provide for one or more alternative methods for settling matters subject to the appellate jurisdiction of the Board which shall be . . . in lieu of other procedures”

Senate Report No. 969 (95th Congress, 2nd Session, 1978), which accompanied the Reform Act, suggested that in developing an alternative method “suitable forms of conciliation, mediation, arbitration and other methods mutually agreeable to the parties could be used.”

In response to the Reform Act’s mandate, in 1983 the Board established the Voluntary Expedited Appeals Procedure (VEAP) to provide a simplified, alternative process for resolving employee appeals. The VEAP was designed to encourage informal resolution of disputes, including settlement by agreement between the parties.

In developing the VEAP, the Board solicited the views of federal agencies, unions, and public interest groups. Originally, the Board proposed that agencies be required to use the alternative procedure if elected by the appellant and approved by a regional office director. Comments from unions and private attorneys favored this proposal. In objecting to this proposal, several agencies mentioned the suggestion in the Senate report that the alternative method be agreeable to both parties. The Board responded to the comments in its final rules by providing agencies the option to elect not to use the alternative procedure.

VEAP was introduced in four regions—Chicago, Denver, San Francisco, and Seattle—in March 1983, as a 12-month pilot project. In October 1983, a fifth region, Dallas, was added and the pilot project was extended to 18 months. The VEAP process became fully operational in all regional offices in April 1985.

Differences Between the VEAP and the Regular Appeals Process

Several differences exist between the regular appeals process and the VEAP.

Appellants may elect the VEAP at the time an appeal is filed or when a regional director suggests that its use is appropriate. However, as discussed above, both the appellant and the agency must consent to using the VEAP. Under the VEAP, the parties waive the right to an official transcript (tape recording) of the hearing proceedings and formal discovery, which is the process whereby each party may obtain information from

the other in preparing for a hearing. Under the VEAP, informal discovery takes place, whereby each party is expected to provide information requested by the other voluntarily. Information obtained through informal discovery is used by each party to prepare the Joint Appeals Record, which is designed to help the parties and the Board narrow the issues and facts under appeal.

Under the VEAP, appellants also have the option of requesting a hearing. If a hearing is elected under the VEAP, it must be held at the work site within 45 days of the appeal filing and no official transcript is maintained by the Board. Hearings under the regular procedures are held at a fixed site established by the Board and an official transcript is produced and made available by the Board. If a hearing is not requested, the decision of the administrative judge is based on the evidence contained in the Joint Appeals Record.

Under the VEAP, the time frames set by the Board for decisions are 60 days for initial decisions by administrative judges in regional offices and 55 days for decisions on petitions for review by headquarters.

Usage of the VEAP Was Low

Since its inception, the VEAP has been used infrequently primarily because agencies have declined appellants' requests that the VEAP be used. According to the Board, during fiscal years 1983, 1984, and 1985, appellants requested the VEAP in 1,097 instances. Agencies declined to use the VEAP in 838, or 76 percent of the appellants' requests. (See table 2.9.)

Table 2.9: Number of Appellant Requests for the VEAP, Agency Consents, and Agency Declines for Fiscal Years 1983-1985^a

Fiscal year	Appellant request	Agency consent	Agency decline	Percent declined by agency
1983	146	50	96	66
1984	317	78	239	75
1985	634	131	503	79
Total	1,097	259	838	76

^aSimilar information for fiscal year 1986 was not available; however, Board officials stated that the number of cases in which the VEAP was used was less in fiscal year 1986 than in previous years.

In our questionnaire, we asked appeals process participants how knowledgeable they were about the VEAP. We found that, overall, 9 percent of

the participants who responded had heard of and used the VEAP; 56 percent had heard of, but had not used the VEAP; and 34 percent had never heard of the VEAP. The remaining 1 percent did not answer this question.

With the exception of private attorneys, most respondents in each group had heard of the VEAP but had not used it. In the case of private attorneys, about half of the participants responding had never heard of the VEAP. (See table 2.10.)

Table 2.10: Participants' Knowledge of the Voluntary Expedited Appeals Procedure

	Percentage of respondents				Total	Number of respondents
	Never heard of it	Have heard of it but not used it	Have heard of it and have used it	No answer		
General counsels	17	71	12	0	100	59
Agency attorneys	8	76	15	1	100	168
Employee and labor relations representatives	3	76	21	0	100	66
Private attorneys	49	44	6	1	100	486
Union presidents	21	69	7	3	100	29
Professional association representatives	25	63	12	0	100	8
All groups	34	56	9	1	100	815

To determine how much experience participants had with the VEAP process, our questionnaire asked participants who indicated they had used the VEAP to also indicate the number of cases for which they used it. Of the participants who said they had used the VEAP, 67 percent said their experience was limited to one case, while only 17 percent had experience with 5 or more cases. Most participants in the agency general counsel and employee and labor relations representative groups had experience with more than one case, and most participants in the agency attorney and private attorney groups and the one professional association representative responding had experience with one case. Of the two union presidents responding, one had experience with one case and the other had experience with three cases. Table 2.11 shows the extent of reported experience with the VEAP by participant groups.

Table 2.11: Number of Cases in Which Participants Have Had VEAP Experience

	Percentage of respondents					Total	Number of respondents
	One case	Two cases	Three cases	Four cases	Five cases or more		
General counsels	43	0	14	0	43	100	7
Agency attorneys	72	11	0	0	17	100	25
Employee and labor relations representatives	29	14	7	7	43	100	14
Private attorneys	88	0	12	0	0	100	28
Union presidents	50	0	50	0	0	100	2
Professional association representatives	100	0	0	0	0	100	1
All groups	67	6	9	1	17	100	77

Participants' Views on Reasons for Using the VEAP

As a result of our comparison of the VEAP with the Board's formal appeals process, we identified three possible reasons for electing to use the VEAP. Our questionnaire asked participants who had been involved in VEAP cases to rate the extent to which each of these possible reasons contributed to their decision to use the VEAP. Overall, most of the participants felt that faster resolution of cases and less formal procedures contributed more to their decision to use the VEAP than the potential for a higher settlement rate prior to a hearing. (See table 2.12.)

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Table 2.12: Participants' Views on Reasons for Using the VEAP

		Percentage of respondents					Total	Number of respondents
Possible reason		Very great or great extent	Moderate extent	Some, little or no extent	No basis to judge	No answer		
Speed up resolution of case	General counsels	29	42	29	0	0	100	7
	Agency attorneys	78	5	11	0	6	100	25
	Employee and labor relations representatives	50	29	21	0	0	100	14
	Private attorneys	38	25	12	25	0	100	28
	Union presidents	50	0	50	0	0	100	2
	Professional association representatives	100	0	0	0	0	100	1
	All groups	53	20	16	9	2	100	77
Less formal process	General counsels	42	29	29	0	0	100	7
	Agency attorneys	17	28	44	0	11	100	25
	Employee and labor relations representatives	50	21	29	0	0	100	14
	Private attorneys	50	13	25	12	0	100	28
	Union presidents	50	50	0	0	0	100	2
	Professional association representatives	100	0	0	0	0	100	1
	All groups	39	21	31	5	4	100	77
Higher settlement rate prior to hearing	General counsels	14	14	43	29	0	100	7
	Agency attorneys	6	11	67	5	11	100	25
	Employee and labor relations representatives	14	7	79	0	0	100	14
	Private attorneys	25	12	38	25	0	100	28
	Union presidents	0	0	50	50	0	100	2
	Professional association representatives	0	0	0	0	100	100	1
	All groups	15	11	55	14	5	100	77

Participants' Views on Reasons for Not Using the VEAP

Based on discussions with officials of the Board and professional association officials prior to the preparation of our questionnaire, we identified the following five reasons for possibly not using the VEAP:

- involvement with the regular appeals process has been satisfactory;
- the VEAP is unfamiliar;
- the VEAP does not produce a record, such as a tape or transcript;

- discovery rules are too restrictive; and
- time limits to present information are too short.

In our questionnaire, we asked appeals process participants who had knowledge of the VEAP to what extent they believed each of the above were possible reasons for not using the VEAP. Table 2.13 shows the distribution of responses among the six groups.

Table 2.13: Participants' Views on Reasons for Not Using the VEAP

		Percentage of respondents					Total	Number of respondents
Possible reason		Very great or great extent	Moderate extent	Some, little or no extent	No basis to judge	No answer		
Involvement with the regular process has been satisfactory	General counsels	49	23	18	8	2	100	49
	Agency attorneys	50	25	14	8	3	100	152
	Employee and labor relations representatives	45	25	16	14	0	100	64
	Private attorneys	27	20	32	14	7	100	241
	Union presidents	18	18	41	23	0	100	22
	Professional association representatives	67	0	33	0	0	100	6
	All groups	38	22	24	12	4	100	534
VEAP is unfamiliar	General counsels	10	6	70	12	2	100	49
	Agency attorneys	14	12	63	7	4	100	152
	Employee and labor relations representatives	20	10	53	17	0	100	64
	Private attorneys	10	10	50	17	13	100	241
	Union presidents	14	4	68	14	0	100	22
	Professional association representatives	0	17	67	16	0	100	6
	All groups	12	10	57	14	7	100	534
VEAP does not produce a record	General counsels	35	12	39	12	2	100	49
	Agency attorneys	53	15	24	7	1	100	152
	Employee and labor relations representatives	38	11	31	20	0	100	64
	Private attorneys	51	7	19	13	10	100	241
	Union presidents	50	9	23	18	0	100	22
	Professional association representatives	33	0	50	17	0	100	6
	All groups	49	10	24	12	5	100	534

(continued)

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		Percentage of respondents					Total	Number of respondents
Possible reason		Very great or great extent	Moderate extent	Some, little or no extent	No basis to judge	No answer		
Discovery rule too restrictive	General counsels	19	16	45	16	4	100	49
	Agency attorneys	20	21	44	11	4	100	152
	Employee and labor relations representatives	5	20	45	30	0	100	64
	Private attorneys	43	16	16	17	8	100	241
	Union presidents	41	14	14	31	0	100	22
	Professional association representatives	33	33	17	17	0	100	6
	All groups	29	18	30	18	5	100	534
Time limits too short	General counsels	23	20	39	14	4	100	49
	Agency attorneys	33	20	35	7	5	100	152
	Employee and labor relations representatives	13	20	34	31	2	100	64
	Private attorneys	39	13	27	14	7	100	241
	Union presidents	23	9	45	14	9	100	22
	Professional association representatives	50	17	17	16	0	100	6
	All groups	32	16	32	14	6	100	534

To enable us to obtain a “consensus” rank ordering of the five reasons, we devised the following method. For each category of respondent, we ranked each reason on a scale of 1 to 5. Generally, the reason that received the largest percentage of responses in the “very great” or “great” extent range was assigned the value 1 while the reason with the lowest number of responses in this extent range was assigned the value 5. When the number of responses for reasons was the same, we assigned the same value to them. The results of this rank ordering are displayed in table 2.14.

Table 2.14: Relative Ranking of Reasons for Not Using the VEAP

Possible reason	Ranked by					
	General counsels	Agency attorneys	Employee and labor relations representatives	Private attorneys	Union presidents	Professional association representatives
Regular process is satisfactory	1	2	1	4	4	1
VEAP is unfamiliar	5	5	3	5	5	5
VEAP does not produce a record	2	1	2	1	1	3
Discovery rule is too restrictive	4	4	5	2	2	3
Time limits too short	3	3	4	3	3	2

As shown in table 2.14, with the exception of the professional association representative group, the groups ranked highly the absence of a hearing record as a reason for not using the VEAP. Agency general counsels, agency attorneys, employee and labor relations representatives, and professional association representatives also ranked highly satisfaction with the regular appeals process as a reason for not using the VEAP. However, private attorneys and union presidents clearly disagreed with the other groups that satisfaction with the regular process was a good reason for not using the VEAP.

We asked participants what other reasons might contribute to their deciding not to use the VEAP. Although there were numerous responses, explanations were so general that meaningful analysis proved difficult. However, we noted that several agency attorneys believed that it was difficult to formulate Joint Appeals Records.

Participants Would Not Elect to Use the VEAP Frequently

In our questionnaire, we asked the participants who had knowledge of the VEAP how often, if at all, they would choose the VEAP if a case could go either through the VEAP or the regular process. Most participants in each of the six groups indicated that they would choose to use the VEAP "some," "little," or "none" of the time. Table 2.15 summarizes how often each group of participants said they would choose the VEAP.

Table 2.15: Participants' Views on How Often They Would Choose the VEAP

	Percentage of respondents					Total	Number of respondents
	All, almost all, or most of the time	About half the time	Some, little, or none of the time	No basis to judge	No answer		
General counsels	8	4	72	16	0	100	49
Agency attorneys	8	8	68	15	1	100	152
Employee and labor relations representatives	5	8	69	18	0	100	64
Private attorneys	4	6	66	21	3	100	241
Union presidents	5	14	59	22	0	100	22
Professional association representatives	0	17	83	0	0	100	6
All groups	6	7	67	18	2	100	534

Participants' Views on the VEAP's Objectivity

Our questionnaire asked participants who had knowledge of the VEAP their views on the comparative objectivity of the VEAP and the regular process. Most agency employee and labor relations representatives and union presidents who had a basis to judge felt that the opportunity to obtain an objective decision under the VEAP was about the same as under the regular process, but most private attorneys believed there was less or much less of an opportunity to obtain an objective decision under the VEAP. About as many participants in the agency general counsel and agency attorney groups believed the VEAP provided less opportunity for objectivity than the regular process as believed the opportunity for objectivity was about the same. The views of professional association representatives varied the most regarding the opportunity for objectivity, with the same number believing that the VEAP offered less or much less objectivity, about the same, and more or much more objectivity than the regular process. Table 2.16 shows the views of each participant group.

Table 2.16: Participants' Views on the Comparative Opportunity of Objective Decisions Under the VEAP and the Regular Process

	Percentage of respondents					Total	Number of respondents
	VEAP provides less or much less opportunity	About the same opportunity	VEAP provides more or much more opportunity	No basis to judge	No answer		
General counsels	31	29	0	38	2	100	49
Agency attorneys	29	29	1	41	0	100	152
Employee and labor relations representatives	20	50	0	30	0	100	64
Private attorneys	46	7	0	44	3	100	241
Union presidents	32	41	0	23	4	100	22
Professional association representatives	33	34	33	0	0	100	6
All groups	36	22	1	39	2	100	534

Participants' Views on the Effectiveness of the VEAP in Simplifying the Appeals Process

In our questionnaire, we asked participants having knowledge of the VEAP how effectively they thought the VEAP has simplified the appeals process. In four of the six groups, about half of the participants responding indicated they had no basis to judge. Of those participants rating the VEAP's effectiveness, most of the participants in two groups—agency employee and labor relations representatives and professional association representatives—rated the VEAP as being effective or very effective. The four other groups were divided across all possible responses. Table 2.17 summarizes all participants' views on the effectiveness of the VEAP in simplifying the appeals process.

Table 2.17: Participants' Views on the Effectiveness of the VEAP in Simplifying the Appeals Process

	Percentage of respondents					Total	Number of respondents
	Effective or very effective	Neither effective nor ineffective	Ineffective or very ineffective	No basis to judge	No answer		
General counsels	21	14	16	47	2	100	49
Agency attorneys	16	15	20	47	2	100	152
Employee and labor relations representatives	41	15	5	39	0	100	64
Private attorneys	20	16	16	44	4	100	241
Union presidents	18	14	14	50	4	100	22
Professional association representatives	67	33	0	0	0	100	6
All groups	22	15	15	45	3	100	534

In November 1986, the Board Chairman established an Exploratory Committee on Alternative Dispute Resolution to examine whether the VEAP should be continued or modified. The Committee included the Legislative Counsel; Director, Policy and Evaluation; Deputy and Assistant Managing Directors for Regional Operations; and administrative judges from the Boston, Seattle, and Chicago regional offices. As of March 1987, the committee had not completed its assessment.

Agency Comments

In a letter dated June 4, 1987, commenting on a draft of this report, the Board's Chairman agreed with our analysis of case processing timeliness. He said the Board is continuing to evaluate its case processing to determine where improvements can be made and that our report will be useful in that evaluation. (See appendix II.)

Participants' Views on the Extent of Objectivity, Independence, Fairness, and Decision Consistency in the Appeals Process

This chapter provides an analysis of the perceptions of participants who responded to our questionnaire about the objectivity, independence, fairness, and consistency of the appeals process.

Generally, appeals process participants

- believed regional office and headquarters decisions were consistent with their supporting rationales;
- were divided in their assessment of the objectivity, independence, and fairness of the process; and
- did not see a great need to increase the objectivity of the process, make decisions more consistent or easily understandable, or increase or decrease processing times.

However, the private attorney and union president groups were less positive in their assessments of the consistency, objectivity, independence, and fairness of the appeals process and perceived a greater need to improve these aspects of the process than did the other groups.

Participants' Perceptions of Appeals Process Objectivity

Our questionnaire asked participants to rate the extent to which they believed the appeals process to be objective. We found that the majority of agency general counsels, agency attorneys, professional association representatives, and agency employee and labor relations representatives generally perceived the process as being objective to a great or very great extent at the regional office and headquarters levels. However, more private attorneys and union presidents saw the process at both levels as being objective from a small (no, little, or some) to moderate extent.

Tables 3.1 and 3.2 summarize, by group, participants' views on the objectivity of the appeals process at the regional office and headquarters levels, respectively.

Chapter 3
Participants' Views on the Extent of
Objectivity, Independence, Fairness, and
Decision Consistency in the Appeals Process

Table 3.1: Perceptions of Appeals Process Objectivity at the Regional Office Level

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	5	25	58	12	0	100	59
Agency attorneys	9	24	65	2	0	100	168
Employee and labor relations representatives	8	30	50	12	0	100	66
Private attorneys	35	23	25	15	2	100	486
Union presidents	35	31	17	17	0	100	29
Professional association representatives	25	0	63	12	0	100	8
All groups	25	24	37	12	2	100	815

Table 3.2: Perceptions of Appeals Process Objectivity at the Headquarters Level

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	7	22	59	10	2	100	59
Agency attorneys	6	17	61	16	0	100	168
Employee and labor relations representatives	8	18	65	9	0	100	66
Private attorneys	34	16	21	26	3	100	486
Union presidents	45	24	17	14	0	100	29
Professional association representatives	12	13	62	13	0	100	8
All groups	25	17	35	21	2	100	815

The groups' views also varied on the question of whether greater objectivity in the decision process was needed. Participants in the agency general counsel, agency attorney, agency employee and labor relations representative, and professional association representative groups generally believed that the objectivity of the decision process needed to be improved to no, little, or some extent, while participants in the private attorney and union president groups generally believed such changes were needed to a moderate, great, or very great extent. Table 3.3 summarizes information on participants' views on the need to improve the objectivity of the decisionmaking process.

Table 3.3: Participants' Views on the Need to Improve the Objectivity of the Decisionmaking Process

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	70	10	3	14	3	100	59
Agency attorneys	79	12	3	3	3	100	168
Employee and labor relations representatives	76	9	4	8	3	100	66
Private attorneys	27	16	40	13	4	100	486
Union presidents	21	10	66	3	0	100	29
Professional association representatives	63	12	12	13	0	100	8
All groups	45	14	28	10	3	100	815

Participants Did Not View the Affirmation Rate of Cases Appealed to Federal Appellate Court as an Appropriate Measure of Decision Objectivity

The United States Court of Appeals for the Federal Circuit, established in 1982, is the only court having jurisdiction to review Board decisions unless issues of prohibited discrimination are raised. Board decisions in which discrimination issues are raised may be appealed to a federal district court. According to the Board, the Court of Appeals for the Federal Circuit affirmed 365 of 375 Board decisions it reviewed during fiscal year 1986.

Our questionnaire asked participants for their views on the extent to which the affirmation rate of cases appealed to the Court of Appeals for the Federal Circuit could serve as a fair barometer of Board objectivity. In general, there was a consensus among the groups that the affirmation rate was not an appropriate measure to use. In each group, fewer than half of all participants responding who expressed a view considered the affirmation rate to be an indicator of objectivity to a great or very great extent. (See table 3.4)

Table 3.4: Participants' Views on Whether Court Affirmation Rate Is a Reasonable Indicator of Board Objectivity

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	25	32	24	19	0	100	59
Agency attorneys	28	26	33	12	1	100	168
Employee and labor relations representatives	30	12	26	30	2	100	66
Private attorneys	40	13	16	30	1	100	486
Union presidents	45	7	14	31	3	100	29
Professional association representatives	25	25	38	12	0	100	8
All groups	36	17	21	25	1	100	815

Participants' Views on Appeals Process Independence

Our questionnaire asked participants to rate the extent to which they believe the appeals process is independent from outside influence. Most participants in the agency general counsel, agency attorney, professional association representative, and agency employee and labor relations representative groups perceived the process as being independent to a great or very great extent at both the regional office and headquarters levels. Most private attorneys and union presidents generally rated the process as being independent from none to a moderate extent. (See tables 3.5 and 3.6.)

Table 3.5: Participants' Perceptions of Independence of the Appeals Process at the Regional Office Level

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	2	19	64	15	0	100	59
Agency attorneys	4	16	77	3	0	100	168
Employee and labor relations representatives	12	17	57	14	0	100	66
Private attorneys	38	19	24	16	3	100	486
Union presidents	45	21	17	17	0	100	29
Professional association representatives	25	13	50	12	0	100	8
All groups	26	19	40	13	2	100	815

Table 3.6: Participants' Perceptions of Independence of the Appeals Process at the Headquarters Level

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	2	22	61	13	2	100	59
Agency attorneys	8	13	59	20	0	100	186
Employee and labor relations representatives	9	15	65	11	0	100	66
Private attorneys	33	16	21	27	3	100	486
Union presidents	52	21	13	14	0	100	29
Professional associations representatives	25	13	50	12	0	100	8
All groups	24	16	35	23	2	100	815

Participants' Views on Appeals Process Fairness

Our questionnaire asked participants to rate the extent to which they believed the appeals process is fair to all involved parties. Most agency general counsels, agency attorneys, professional association representatives, and agency employee and labor relations representatives rated the process as being fair to all parties involved to a great or very great extent at both the regional office and headquarters levels. Most private attorneys and union presidents generally rated the process as being fair to all parties involved from none to a moderate extent. (See tables 3.7 and 3.8.)

Table 3.7: Participants' Perceptions of the Fairness of the Appeals Process to All Parties Involved at the Regional Office Level

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	10	20	58	12	0	100	59
Agency attorneys	17	20	59	3	1	100	168
Employee and labor relations representatives	12	23	53	12	0	100	66
Private attorneys	38	23	22	14	3	100	486
Union presidents	52	14	17	17	0	100	29
Professional association representatives	13	13	62	12	0	100	8
All groups	30	21	35	12	2	100	815

Table 3.8: Participants' Perceptions of the Fairness of Appeals Process to All Parties Involved at the Headquarters Level

	Percentage of respondents					Total	Number of respondents
	No, little, or some extent	Moderate extent	Great or very great extent	No basis to judge	No answer		
General counsels	9	22	57	10	2	100	59
Agency attorneys	9	21	54	16	0	100	168
Employee and labor relations representatives	12	20	59	9	0	100	66
Private attorneys	36	16	18	27	3	100	486
Union presidents	56	21	10	13	0	100	29
Professional association representatives	25	0	62	13	0	100	8
All groups	27	17	32	22	2	100	815

Participants' Perceptions of Appeals Process Consistency

Our questionnaire asked participants to rate on a five-point scale, ranging from "very consistent" to "very inconsistent", how they viewed the consistency of regional office and headquarters decisions with the rationales that supported them. We found that most agency general counsels, agency attorneys, agency employee and labor relations representatives, and professional association representatives believed regional office and headquarters decisions were consistent or very consistent with supporting rationales. Private attorneys and union presidents tended to be less satisfied with the consistency of decisions than were the other groups. Table 3.9 shows the responses on the consistency of regional office and headquarters decisions with supporting rationales.

Table 3.9: Perceptions of Consistency of Decisions With Supporting Rationales

Regional Office Decisions	Percentage of respondents					Total	Number of respondents
	Inconsistent or very inconsistent	Neither consistent nor inconsistent	Consistent or very consistent	No basis to judge	No answer		
General Counsels	4	15	66	15	0	100	59
Agency attorneys	8	5	76	10	1	100	168
Employee and labor relations representatives	12	14	59	15	0	100	66
Private attorneys	23	12	35	26	4	100	486
Union presidents	35	17	31	17	0	100	29
Professional association representatives	12	12	63	13	0	100	8
All groups	18	11	48	21	2	100	815
Headquarters Decisions							
General counsels	5	5	78	12	0	100	59
Agency attorneys	4	7	79	9	1	100	168
Employee and labor relations representatives	2	12	74	12	0	100	66
Private attorneys	20	13	33	28	6	100	486
Union presidents	21	31	31	17	0	100	29
Professional association representatives	0	0	88	12	0	100	8
All groups	14	12	49	21	4	100	815

Our questionnaire also asked participants to rate the consistency of decisions involving the same or similar issues. We found that most of the participants responding who said they had a basis to judge believed the decisions made by regional offices and headquarters were consistent or very consistent from case to case. However, fewer private attorneys and union presidents viewed case-to-case decisions as being consistent than did the other groups. (See table 3.10)

Table 3.10: Participants' Perceptions of Consistency of Decisions Involving the Same or Similar Issues

	Percentage of respondents					Total	Number of respondents
	Inconsistent or very inconsistent	Neither consistent nor inconsistent	Consistent or very consistent	No basis to judge	No answer		
Regional Office Decisions							
General counsels	9	17	54	20	0	100	59
Agency attorneys	8	14	66	12	0	100	168
Employee and labor relations representatives	20	21	44	15	0	100	66
Private attorneys	17	15	29	36	3	100	486
Union presidents	24	17	38	21	0	100	29
Professional association representatives	12	12	63	13	0	100	8
All groups	15	15	41	27	2	100	815
Headquarters Decisions							
General counsels	7	3	76	14	0	100	59
Agency attorneys	5	6	74	14	1	100	168
Employee and labor relations representatives	5	13	70	12	0	100	66
Private attorneys	16	12	28	39	5	100	486
Union presidents	21	28	31	20	0	100	29
Professional association representatives	0	0	88	12	0	100	8
All groups	12	11	45	29	3	100	815

Participants' Views on Need for Changes to the Overall Decision Process

Our questionnaire asked participants their views on whether changes to the overall decision process were needed. The questionnaire identified five general areas of possible change and asked participants to rate the extent to which they believed the changes were needed. The five areas of possible change were:

- increased objectivity,
- more consistent decisions,
- decreased processing times,
- increased processing times, and
- more easily understandable final Board decisions.

While the participants from the six groups did not, overall, perceive a great need for changes to the decision process, most participants in the private attorney and union president groups perceived a greater need to

increase the objectivity of the decision process than did most participants in each of the four other groups. Additionally, most participants in the union president group perceived a greater need to make decisions more consistent, understandable, and timely than did most participants in each of the other groups. None of the groups felt strongly about the need to decrease processing time. Table 3.11 provides information on the participants' perceptions of the need for changes in the decision process.

Table 3.11: Participants Views on the Need for Changes in the Decision Process

Area of possible change		Percentage of respondents					Total	Number of respondents
		Little, no, or some need	Moderate need	Great or very great need	No basis to judge	No answer		
Increase objectivity	General counsels	70	10	3	14	3	100	59
	Agency attorneys	79	12	3	3	3	100	168
	Employee and labor relations representatives	76	9	4	8	3	100	66
	Private attorneys	27	16	40	13	4	100	486
	Union presidents	21	10	66	3	0	100	29
	Professional association representatives	63	12	12	13	0	100	8
	All groups	45	14	28	10	3	100	815
Make decisions more consistent	General counsels	66	15	7	10	2	100	59
	Agency attorneys	75	12	7	4	2	100	168
	Employee and labor relations representatives	68	14	10	5	3	100	66
	Private attorneys	23	23	24	24	6	100	486
	Union presidents	21	24	45	7	3	100	29
	Professional association representatives	63	25	0	12	0	100	29
	All groups	41	19	18	17	5	100	815
Decrease processing time	General counsels	51	24	10	12	3	100	59
	Agency attorneys	77	15	5	2	1	100	168
	Employee and labor relations representatives	60	12	18	5	5	100	66
	Private attorneys	47	17	18	10	8	100	486
	Union presidents	45	21	31	3	0	100	29
	Professional association representatives	75	25	0	0	0	100	8
	All groups	55	17	15	8	5	100	815

(continued)

Chapter 3
Participants' Views on the Extent of
Objectivity, Independence, Fairness, and
Decision Consistency in the Appeals Process

		Percentage of respondents					Total	Number of respondents
Area of possible change		Little, no, or some need	Moderate need	Great or very great need	No basis to judge	No answer		
Increase processing time	General counsels	76	5	2	12	5	100	59
	Agency attorneys	80	8	7	2	3	100	168
	Employee and labor relations representatives	84	3	0	5	8	100	66
	Private attorneys	64	3	10	12	11	100	486
	Union presidents	83	3	7	4	3	100	29
	Professional representatives	88	0	0	12	0	100	8
	All groups	71	4	8	9	8	100	815
Make final board decisions easily understood	General counsels	65	22	3	8	2	100	60
	Agency attorneys	84	7	5	2	2	100	168
	Employee and labor relations representatives	67	10	17	3	3	100	66
	Private attorneys	44	12	21	16	7	100	486
	Union presidents	35	17	42	3	3	100	29
	Professional representatives	50	25	13	12	0	100	8
	All groups	55	12	17	12	4	100	815

Agency Comments

In his comments on a draft of this report (see appendix II), the Board's Chairman said he believed our questionnaire respondents' views on the Board's performance generally confirmed its reputation as a fair and independent adjudicator. He observed, however, that the adjudicatory process typically results in a winner and loser which creates the possibility of response bias since a prevailing party might tend to view the process more favorably than would a losing party. He said that case outcome might have influenced the questionnaire respondents' views of the objectivity, independence, and fairness of the process. We agree that case outcome could have influenced the questionnaire respondents' views, but we have no evidence that it did. However, we have added statements in the executive summary and the objective, scope, and methodology section of this report advising the reader of the possibility that case outcome could have affected questionnaire respondents' views.

Questionnaire Development, Survey Methodology, Sampling Procedure, and Data Analysis

To obtain the views of individuals who have an interest in and may have participated in the appeals process, we sent questionnaires in January 1986 to members of the following groups: employee and labor-management relations representatives in federal agencies, general counsels of federal agencies, attorneys of federal agencies, presidents of federal employee unions, private attorneys representing appellants, and representatives of federal employee professional associations. The employee and labor-management relations representatives were members of the Office of Personnel Management's Interagency Advisory Group Committee on Employee and Labor-Management Relations. Professional association representatives were from organizations belonging to the Public Employees Roundtable. Union presidents were with unions listed in Union Recognition in the Federal Government (Office of Personnel Management, January 1985). Agency general counsels were members of the General Counsels Committee. Private attorneys and agency attorneys were selected from Board prepared listings of attorneys who had appeared before administrative judges in the Board's regional offices.

Questionnaire Development and Quality Control

We developed a questionnaire to obtain the participants' views on the appeals process. We pretested the questionnaire to determine if (1) the respondents possessed the information desired, (2) the questionnaire would be burdensome to the respondent, and (3) if the questionnaire design, such as the print size, the layout complexity, and procedures for recording the information, was appropriate. Any problems with the questionnaire design that the pretest uncovered were corrected. We then mailed the questionnaire to persons in the aforementioned six groups.

To maintain quality control over the data, we reviewed the returned questionnaires for completeness and accuracy. We then keyed the questionnaire information to create a computerized database. We verified a 10 percent random sample of the database with the questionnaires and did logic checks to look for incorrect or inconsistent data. With two exceptions, we corrected all errors that were detected. However, this inadvertent oversight does not affect the conclusions drawn from our analysis.

Sample Selection and Sampling Error

We sent questionnaires to all persons in the general counsel, employee and labor relations representative, union president, and professional association representative groups. For the remaining two groups, we selected random samples of 191 of the 269 agency attorneys and 318 of

the 1,095 private attorneys identified by the Board. Table I.1 shows the number of persons sampled in each group.

Table I.1: Participant Groups Included in Questionnaire Survey

Group	Total number of persons in the group	Number of persons in the sample
General counsels	82	82
Agency attorneys	269	191
Employee and labor relations representatives	111	111
Private attorneys	1,095	318
Union presidents	87	87
Professional association representatives	23	23
Total	1,667	812

We selected our samples of agency attorneys and private attorneys using a statistical formula that considered the size of each group, a 95 percent level of confidence, and a 5 percent sampling error. Consequently, for each estimate made from the two samples, the chances are 95 out of 100 that the actual number for all persons in each group is somewhere between plus or minus 5 percent of our estimate.

Questionnaires Mailed and Response Rate

We mailed questionnaires to 187 of the 191 agency attorneys in the sample because we did not have addresses for 4 attorneys. We mailed questionnaires to 314 of the 318 private attorneys because 1 attorney appeared in the sample twice and 3 attorneys were affiliated with unions that we had already included in our union president group. Table I.2 shows the number of persons in the samples and the number that were sent questionnaires.

Table I.2: Number of Persons Sampled and Number of Persons Mailed Questionnaires by Group

Group	Number of persons sampled	Number of persons mailed questionnaires
General counsels	82	82
Agency attorneys	191	187
Employee and labor relations representatives	111	111
Private attorneys	318	314
Union presidents	87	87
Professional association representatives	23	23
Total	812	804

We mailed 804 questionnaires and received 600 usable responses for a usable response rate of 75 percent. Of the remaining 204 questionnaires, 155 were not returned, 24 were not deliverable, and 25 were either returned, but not analyzed, because those persons did not indicate their level of experience with cases, or because they were incomplete, duplicates, or otherwise unusable. The 600 usable responses represent an estimate of how 1,169 persons in the six groups would have responded. Table I.3 shows the number of usable responses in each group and the estimated number of persons that those responses represent.

Table I.3: Number of Usable Responses and the Number They Represent in Each Group

Group	Usable responses	Number of Persons represented
General counsels	70	70
Agency attorneys	155	218 ^a
Employee and labor relations representatives	90	90
Private attorneys	207	713 ^a
Union presidents	58	58
Professional association representatives	20	20
Total	600	1,169^a

^aThe sampling error for the 218 agency attorneys is plus or minus 3 percent for the 713 private attorneys plus or minus 4.4 percent, and for the total of 1,169 persons plus or minus 2.9 percent

Data Analysis

In our analysis of questionnaire results, we included responses only from those persons who said that they had appeals case experience since 1979. For the two groups sampled, we estimated the number of people in the universe who would have had experience with the Board from the number of people in the sample who responded to our questionnaire. We asked persons who had no experience since 1979 not to complete the questionnaire.

Table I.4 shows the number of persons who reported having had appeals case experience by each respondent group.

**Table I.4: Estimated Number of Persons
Who Had Experience With Appeals
Cases Since 1979**

Group	Number of Persons represented
General counsels	59
Agency attorneys	168 ^b
Employee and labor relations representatives	66
Private attorneys	486 ^b
Union presidents	29
Professional association representatives	8
Total	815^{ab}

^aTotal does not add due to rounding.

^bThese numbers are estimates of the actual numbers of persons in the groups. The sampling error for the 168 agency attorneys is plus or minus 3.7 percent; for the 486 private attorneys plus or minus 4.6 percent; and for the total of 815 persons plus or minus 3.1 percent.

Unless otherwise noted in the text, all the percentages presented in this report are based on the estimate of 815 persons who reported having experience with cases since 1979 and all sampling errors will be, at most, plus or minus 5 percent of the estimate.

Agency Comments

The Board's Chairman suggested that inclusion of the questionnaire as an attachment to the report may also be helpful. (See appendix II.) Rather than add to the length of this report, we will provide a copy of the questionnaire upon request to those who may be interested.

Comments From the Chairman, U.S. Merit Systems Protection Board

GAO Note: This report incorporates the technical comments that were listed in the enclosure.

THE CHAIRMAN



U.S. MERIT SYSTEMS PROTECTION BOARD
1120 Vermont Avenue, N.W.
Washington, D.C. 20419

June 4, 1987

Dear Mr. Anderson:

Thank you for the opportunity to comment on a draft of your proposed report to Congress titled, "Analysis of Case Processing Timeliness and the Views of Case Participants on Board Activities." The report's statistics bear on whether the Board has been successful in adjudicating employee appeals in a timely manner consistent with due process. It is gratifying to observe that the results of your research reveal time and again the Board's efficient and effective performance.

The draft report analyzes case processing timeliness in relation to the Board's self-imposed standards. The regional offices, where the majority of cases are processed, met the Board's 120-day standard for processing appeals in 99 percent of all cases during FY 1986. The report also makes apparent the significant improvement in the timely processing of petitions for review at the headquarters level. It is particularly interesting that most participants in the appeals process think that 91 to 120 days or longer is a reasonable timeframe for processing petitions for review even though the Board's internal goal is 110 days. In fact, during FY 1986, the Board averaged 122 days and processed 71.5 percent of all PFR's within 120 days. The Board, of course, continues to evaluate its case processing to determine where improvements may be made. Your draft report will prove useful in our evaluation.

Because the Board's deadlines are self-imposed, its experiences in efficient case processing can perhaps best be appreciated when they are compared to the experiences of other administrative tribunals. In this regard, it is noteworthy that in a recent conference on alternative dispute resolution, a U.S. Senator observed that average times for the completion of administrative adjudications in four major agencies ranged from a low of 398 days to a high of 767 days, or more than two years. Indeed, with an annual workload of nearly 10,000 cases, and with fewer than 330 employees, our research reveals no Government agency that

Discussed on p. 37.

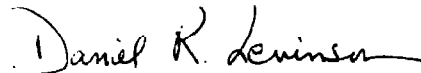
Appendix II
Comments From the Chairman, U.S. Merit
Systems Protection Board

processes as many complex and sensitive cases in so short a time period, and with as high a court affirmance rate, as the Merit Systems Protection Board.

Another aspect of the report is information on the objectivity, independence, and fairness of the Board's appeals process. The opinions produced in the draft result from a survey of those who have practiced or in some way appeared before the Board. These numbers generally confirm the Board's reputation as a fair and independent adjudicator. The report could benefit from an explicit reminder, however, that the Board's adjudicatory process typically results in a winner and a loser. Obviously, this creates the possibility, if not the likelihood, of response bias since, as a matter of human nature, a prevailing party would tend to view the process more favorably than a losing party. Perhaps the addition of a statement in the report which underscores that the survey respondents were individuals affected by a Board decision and that the nature of the decision could have had an impact on their opinion, would help to ensure that readers place the relevant statistics in their proper context. Inclusion of the questionnaire as an attachment to the report may also be helpful.

Again, thank you for the opportunity to comment on the draft report. It is respectfully requested that this letter be published as an appendix to your final report. A list of technical comments is enclosed for your consideration. If you have any questions about these comments or desire any additional information, please do not hesitate to contact me, or anyone else at the Board.

Sincerely,



Daniel R. Levinson
Chairman

Enclosure

Mr. William J. Anderson
Assistant Comptroller General
General Government Division
U.S. General Accounting Office
Washington, DC 20548

Discussed on p. 47
Discussed on p. 51.

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